

## DRAFT

A meeting of the New Hampshire Water Well Board was held on December 8<sup>th</sup>, 2005 at 9:00 am, in rooms 111 & 112, 29 Hazen Drive, Concord, NH, 03302.

Present were: Bart Cushing, Chairman

Rene Pelletier, Secretary

Board members: Jeffrey Tasker, Peter Caswell, Christopher Covell, Thomas Garside, and  
Fredrick Chormann (for David Wunsch)

Staff: Rick Schofield and Genevieve Al-Egaily

Chairman Cushing brought the meeting to order at 9:13 am, introduced Board and staff members, and welcomed new Board member Thomas Garside owner of New Hampshire Boring Inc.

### **Approval of Minutes**

Upon motion by Mr. Covell and seconded by Mr. Tasker, the Board unanimously voted to accept the Minutes of the October 13<sup>th</sup>, 2005 meeting.

### **Request to Amend the Minutes of February 2, 2005**

Mr. Schofield reported that Mr. Huntley from the NH Department of Transportation (“NHDOT”) had requested that the Minutes of the February 2, 2005 meeting be updated to reflect the language he had suggested relating to the discussion on wells located within 50 feet of NHDOT’s highway Right-of-Way. He felt that the changes would help to clarify the issue.

Robert’s Rules does not allow the official Minutes of the February 2, 2005 meeting to be changed once approved, however, the Board can include the amendments into the Minutes of the current meeting and the Board voted to adopt the amendments as written below.

### **Wells located within 50 feet of NHDOT’s highway Right-of-Way**

Mr. Schofield stated that the Board had received two letters from NHDOT about an ongoing problem regarding wells, which were being drilled within 50 feet of the state’s right-of way. He stated that because the Board had no rules regulating setbacks to state highways, there was little that they could do with regard to enforcement without implementing rules. Mr. Schofield explained that the DES Subsurface Systems Bureau approved plans that have wells located within the NHDOT right-of-way because the Bureau considered roadways to be undevelopable land. However, Mr. Schofield stated that he had spoken with staff at the Subsurface Systems Bureau and they had agreed that if the Water Well Board adopted a rule requiring a setback the Bureau would comply.

Phil Huntley from NHDOT explained that he was concerned that the public was not aware of the required setbacks and that by locating or constructing a well within 50 feet of the state’s highway right-of-way they were forfeiting their right to compensation from the state if their well became contaminated. Approximately 7-8 of the 40-50 complaints of contaminated wells that the DOT receives each year were being turned down for replacement or compensation from the state because the wells were located or constructed within the state’s highway right-of-way. Mr. Huntley offered to send the Board a file containing a map showing the districts used by the DOT

and the names and phone numbers of the person to contact in each of the districts to obtain information on the locations of the state's right-of-ways.

The Board agreed that it should adopt the language contained in RSA 228:34 to insure consistency with Statute's requirements on the location of wells. The Board decided that the Non-Conforming Well Location Form should be modified to inform the public of the loss of rights if a well is located within 50 feet of highway rights-of-way and drainage ditches or both, or where the location does not allow or provide for adequate surface drainage.

### **Old Business**

#### **DES Enforcement Actions**

Mr. Schofield updated the Board on the enforcement actions taken by the Board and DES.

The Board placed Roth Artesian Well Company on probation for one year for non-reporting. DES proposed a fine of \$5056. Roth Artesian Well Company has until December 12, 2005 to respond to the proposed action.

The Board placed Valley Artesian Well Company on probation for two years for failure to file well completion reports. DES issued an administrative fine by consent in the amount of \$1538. Valley Artesian Well Company paid \$615. The remaining \$923 was suspended provided that they have no additional violations for a period of one year.

Hartley Industries was placed on a two-year probation by the Board for non-reporting. DES has sent a demand for immediate payment of \$6200 because Hartley Industries was in default of the October 2003 settlement agreement with DES. An administrative fine had been issued in the amount of \$6,889 and Hartley Industries had agreed to pay 10 percent of the fine with the remainder being suspended provided there were no additional violations during the next two years. However, several reports had been submitted late and others remained outstanding at the August 4 Board meeting resulting in the default. To date there has been no response from Hartley Industries.

The Board requested that they be update on the status of these cases at the next meeting to determine if further action by the Board was necessary.

Woodsome Well Drilling was placed on a two-year probation for installing pumps without a license, and other code violations. DES issued an administrative fine by consent in the amount of \$2,900, which was suspended providing they have no additional violations for two years.

DES issued Norman R. Davis an administrative fine by consent in the amount of \$1,304. The fine was suspended provided that there were no additional violations for two years. The Board took no action against his license.

DES issued a proposed administrative fine of \$500 for the alleged failure of Comac Pump & Well to properly seal a casing. Comac Pump & Well must respond by Dec. 15th 2005.

Gap Mountain Drilling and Furbish Well Drilling were both placed on probation for one year for non-reporting by the Board.

The Board agreed to review the status of each case at the end of each probationary period.

Mr. Pelletier joined meeting at 9:37 AM.

### **Complaints**

#### **Nancy Randlov / Fowler Well Drilling**

Mr. Schofield gave an overview of the case and reported on the status of the complaint against Fowler Well Drilling. Mr. Fowler had taken three months to drill the Randlov's a well. The well would continually run dry, the water smelled, contained too much sediment, and the horse would not drink the water. Mr. Fowler had stated that he had told the Randlov's that it would take him a long time to complete their well. DES staff had visited the site on July 22nd and met with Allan Randlov. He had reiterated the complaints that were made by Nancy Randlov in the original complaint. A new well had been drilled by Capital Well Company. That well was 420 feet deep, 118 feet to bedrock, had 130 feet of casing, and a yield of 30 gallons per minute. The Fowler well was thought to be 50 feet deep. However, at that time no well completion report had been filed. DES sent Mr. Fowler a Notice of Finding to obtain the well completion report.

Mr. Schofield stated that the original letter that he sent to Mr. Fowler informing him of this hearing had stated the wrong date. A new letter with the corrected date had been sent. However, he was not sure that Mr. Fowler had received that letter. Mr. Fowler arrived yesterday for the meeting, the date indicated by the original letter, and had submitted a well completion report for the Randlov well. The report indicated that the well was 62 feet deep, had 63.5 feet of casing, a yield of four gallons per minute, a static water level of five feet, and was a gravel well finished in till, and had no screen. Mr. Fowler had been quite distraught when he was informed that the meeting was December 8<sup>th</sup>, and not December 7<sup>th</sup>. He stated that he would not be able to attend today's meeting and submitted a letter requesting that the matter be rescheduled of the next meeting. He also stated that he had discussed a settlement agreement with the Randlovs and had offered them a 50 percent refund.

Chairman Cushing called Nancy Randlov to the table.

Mrs. Randlov explained that she had hired Mr. Fowler to drill a well but she did not have a written contract. She stated that he had never mentioned it would take him a long time to complete the well and he had left his rig in their way causing them to be unable to complete the fence they were building. After repeatedly asking him to finish the well, he came and removed his rig without doing any additional work and stated that the well was finished when it had not been finished the day before. The water was like mud so he had flushed the well ruining a freshly seeded pasture. Mrs. Randlov stated that he had claimed that he had gotten clear water and that there was nothing wrong with the water quality. However, she had never seen the water run clear. Mr. Fowler had not been helpful with any request and had stated that she was unreasonable. The water had been tested and she was told that it would not be drinkable without an expensive filter system because of the amount of sediment in the water. So they called another company and had a new well drilled. She stated that Mr. Fowler had offered to give her a partial refund but she had not heard from him again and she was concerned that he could do this to someone else.

The Board requested that Mrs. Randlov sent them copies of the water quality test, Mr. Fowler's bill, and her canceled check. The Board also noted that Mr. Fowler had used six inch steel casing to construct the well, which indicated that he had intended to drill a bedrock well. The

Board concluded that a letter be sent to Mr. Fowler stating that this matter would be put on the agenda of the next meeting and his attendance was being requested. If Mr. Fowler did not attend the meeting, the Board would schedule a license revocation hearing for nonperformance and he may be required to decommission the well and give the Randlov's a full refund.

### **Reporting**

#### **Fowler Well Drilling-Luke Fowler**

Mr. Schofield reported that Mr. Fowler had been one of the drillers requested to attend the August Board meeting to discuss this compliance with the reporting rules. He had not filed any reports from 2001 to 2004 and had only filed one report in 2005. However, Mr. Schofield explained that Mr. Fowler drilled very few wells.

The Board decided to postpone the matter until the next meeting to allow Mr. Fowler to be in attendance.

#### **Western Maine Water Wells Inc.-Bruce Champney**

Mr. Schofield reported that Mr. Champney of Western Maine Water Wells Inc. had also been invited to the August Board meeting to discuss the number of reports filed during 2003 and 2004. Mr. Champney had stated that his record keeping was not good and he was unable to provide any additional information on the number of wells he had drilled in New Hampshire during that time. He had been granted a continuance at the October Board meeting to allow him time to obtain counsel in New Hampshire. Mr. Schofield had provided Western Maine Water Wells Inc. with a report listing all of the well completion reports submitted by the Company since May of 1998. Western Maine Water Wells Inc. had submitted 18 reports during that time. Since the August meeting, Mr. Schofield reported that they had filed eight additional reports dated from July 27th through Nov. 2nd. Three additional reports had been submitted today, one from July of 2003 and two from 2004.

Chairman Cushing invited Mr. Champney and his attorney, Paul Hodes to the table.

Attorney Hodes stated that he believed this was the first time that Mr. Champney had been called in front of the Board and explained that Western Maine Water Wells Inc. was a small company consisting of only five people, one of whom was part-time. He explained that Mr. Champney's record keeping was not all that it should be and he had not retained copies of the well completion reports for his own records. His failure to submit reports had never been intentional and his record keeping procedures had now been changed to ensure his compliance. Attorney Hodes stated that Mr. Champney was sorry for his lack of compliance and he had filed all of his reports since the last meeting. They were also working on registering Western Maine Water Wells Inc. with the Secretary of State's office. However, they had not yet heard back on the status of the filing.

The Board requested that attorney Hodes notify them when Western Maine Water Wells Inc. was officially registered. They also noted that several of the well completion reports submitted by Mr. Champney had incomplete address information and requested that he submit completed address information for those reports.

Mr. Champney stated that to the best of his knowledge he was now up-to-date with all of his reporting and that he would submit the completed address information.

The Board requested that Mr. Champney agree to not do any work in New Hampshire until they met the requirements of the Department of Revenue and Secretary of State's registration requirements.

Mr. Champney agreed and attorney Hodes stated that he would submit a letter to the Board within ten days stating that no work would be conducted until these conditions were met.

The Board also requested that the well completion reports with the completed address information be submitted with the letter.

### **Discussion on Post Hydro-Fracturing Yield Tests**

Mr. Schofield reported that the letter sent by John Dutra had strongly encouraged the Board to institute regulations to protect homebuyers by ensuring that the yield after Hydro-fracturing reported on the well completion report was a real and meaningful number. When purchasing a house Mr. Dutra had been told that the well yielded two gallons per minute. The well completion reported stated that the original yield before the well had been Hydro-fractured was 0.1 gallons per minute and after being hydro-fractured the well had a yield of two gallons per minute. Mr. Dutra had determined that the yield was not two gallons per minute. The actual yield was closer to 0.5 gallons per minute. Since the last meeting Northeast water wells Inc. had drilled a replacement well for Mr. Dutra. This well was 565 feet deep with a yield of 25 gallons per minute.

Mr. Schofield had conducted a survey to see how the industry was currently measuring yield after hydro-fracturing a well and presented the results to the membership. The majority of the contractors contacted conduct a recovery test using an acoustical probe. The procedure includes setting a pump at 300 feet, pumping the well down to (150' to 300'), which may take from ½ hour to 2 hours to pump down. Stop pumping and wait from (5 min. to 10 min.). Restart the pump and measure volume of water evacuated or the recovery rate with acoustical probe. Repeat two or three times or until stabilized.

Green Mountain Well Drilling conducts a 3.5-hour pump test as reported on their well completion reports. Ike Goodwin does an airlift test and blows the well out until the water level stabilizes which he says is the best method. For low yield wells, they go back and measure the static water level 24 hours later. If a pump is used, they pump test for 3 to 4 hours. They spend the whole day on a frac.

Skills and Sons conducts a pump test for a minimum of eight hours. If the yield is less than two gallons per minute, they return the next day and measure the static water level. If the static level is low, they pump the well out again, and measure the recovery rate. Many of the drillers stated that they go back the next day and measure the static water level if it is a low yielding well (one to two gallons per minute). Mr. Schofield also reported that the state of Maryland required a six hour pump test for all wells and a minimum yield of one gallon per minute. In Wisconsin, Lang Well Drilling waits one to two days before they go back to do a 24-hour pump test with a 0.5 hp pump.

Mr. Schofield suggested that there were two ways to make sure that the information on the reports was accurate particularly with low yielding wells. The Board could; 1) Establish a new standard for conducting yield tests after Hydrofracturing, or 2) Enforce the current rule as written. Administrative rule We 602.10 (f) states, "for wells yielding 5 gallons per minute or less, yield measurement shall be for a minimum of 30 minutes after dewatering the hole and until the flow has stabilized." RSA 482-B:16 leaves several options open to DES including fines, administrative orders, or civil penalties. Mr. Schofield suggested that in his opinion, the best way to address the problem was through enforcement, rather than adopting a new rule, because he felt that the current rule was good.

Chairman Cushing opened the floor for the public to give their opinions on this issue.

John McKinney of McKinney Well Company of Plaistow, New Hampshire stated that he believed this was a matter of ethics since there were already regulations in place.

David Hunt stated that the yield of a well could be progressive, changing over time. He stated his concern that the driller was the one who had the opportunity to fill out the report. However, the responsibility for the yield was that of the hydro-fracturing company.

John Dutra stated that the problem of ensuring the test resulted in a meaningful number could be solved by having a standard.

The Board expressed concern about adopting a specific procedure for conducting a yield test after hydro-fracturing because of the geologic differences that exist statewide. The Board concluded that drillers should be held accountable for following the rules that already exist.

#### **NHWWA Complaint-Request For Hearing Re: Bemis Group LLC**

***The Board voted to enter into private session to receive legal advice from the Board's Counsel. The Board closed the private session and re-opened the meeting to the public.***

Mr. Schofield reported that the office had received several letters concerning the license issued to Bemis Group LLC. A letter from the New Hampshire Water Well Association signed by the Vice President Jeff Quinn alleged that Bemis Group LLC had been issued a license based on false information and requested that the Board hold a public hearing to look into his experience. He also received letters from Roger Skillings, David Haynes, Douglas Maillet, and Alan Follett concerning the licensing of Jeff Bemis, Bemis Group LLC. Mr. Schofield reported that Mr. Bemis had filed 30 well completion reports since being licensed, and had been filing the reports on a regular basis. Currently, DES is investigating any wells constructed by Mr. Bemis prior to receiving a license. DES was also looking into several complaints alleging that Mr. Bemis was using the name McKenna after being told that he could not use that name because the license was being issued under the name Bemis Group LLC. Mr. Schofield reported that he had gone to Mr. Bemis's shop in Fitzwilliam and had taken pictures of signs, which read McKenna Geothermal, wells, pumps, and filters. Underneath that name, the sign said Bemis Group LLC.

Chairman Cushing invited the individuals in attendance that had submitted a letter, and wished to speak, to address the Board.

Jeff Quinn of Skillings and Sons and vice president of the New Hampshire Water Well Association stated that the association had requested a hearing because they had received a number of complaints regarding his lack of drilling experience. Some members of the association had worked with Mr. Bemis and they were not aware of him ever having worked on a rig.

Roger Skillings stated that on his license application Mr. Bemis had stated that he was involved with wells and pumps while employed at Skillings and Sons. This was not true. He was a filtration systems salesman for Culligan and had come to Skillings and Sons as a knowledgeable filtration salesman. He had worked for Skillings and Sons for two years and nine months and had no drilling or pump installation experience while working for the company. Also when he had applied to Skillings and Sons his application had not listed any drilling or pump installation experience.

Mr. Bemis explained that he had taken care of the old McKenna well completion reports that were missing address information as requested by the Board. He then stated that he had worked for Culligan as a filtration and water treatment salesman and was employed as a filtration salesman at Skillings and Sons. However, while working at Skillings and Sons he had also worked with Mike Pelletier and Norman Skillings on a drill rig and he had worked with Scott Boggis on numerous pump installations. He also stated that he had been affiliated with Aetna pumps, which used Blake Equipment, and had been involved in all aspects of pump installation. Mr. Bemis said that he had years of experience and had received his experience on a drill rig in New York with Hanson's Well Drilling and Bucky Moore Well Drilling. One of the rigs was a rotary and the other was a pounder.

When asked by the Board if he stood by his statement that Mr. Bemis had 10 years of experience drilling wells, Bruce Follett stated that he believed Mr. Bemis's experience was closer to two years and not 10 as indicated in the reference. He also stated that Mr. Bemis had not drilled or assisted on any wells that he had drilled.

Upon motion by Mr. Pelletier and seconded by Mr. Tasker, the Board voted unanimously to have DES staff contact all of Mr. Bemis's references and inquire if they still stood by their references and the experience that they stated he had.

### **New Business**

#### **Flood of 2005-Alstead Flood Relief Volunteers**

Bill Moran a selectman from Alstead and on behalf of the Alstead Flood Relief Volunteers spoke to the Board about the ongoing situation in Alstead. He thanked the Board for sending out an e-mail to the water well contractors requesting volunteers to help with construction and repair of wells damaged or destroyed by the flooding. They had received calls from 2 contractors volunteering to help and anyone wishing to help could call their relief number 835-6593. He stated that as an all-volunteer organization with no overhead, all of the money raised was going directly to the relief efforts. To date over \$200,000 had been raised. He stated that they were trying to find help anywhere they could since the maximum payout allowed by FEMA was \$5400. Currently, 26 families were still in need of repairs to their wells. One contractor, who put in a well, had spoken with his supplier to get the supplies donated.

Mr. Covell stated that as the public's representative on the Board, he had gone to Alstead to see if he could assist in any way. He had been working with FEMA and had established a protocol to inspect, delineate, and identify wells that were damaged and in need of repair or had been destroyed by the flooding. A master list had been compiled to identify the wells that needed to be replaced or repaired. Anyone wishing to help could contact the health officer who had a letter stating the specific work that needed to be done on each well.

### **Licensing**

#### **New Applicants**

Mr. Schofield passed out the applications for new licenses and presented the Board with a report provided by Mr. Mackey. Several of the applications were for previously licensed contractors who had allowed their licenses to expire. Mr. Schofield pointed out that Scott Boggis had forgotten to sign his application and informed the Board that Mr. Boggis had been notified of the lack of signature on his application.

Mr. Mackey explained that Mr. Streeter was still working with the Secretary of State's office to get his business registered.

The Board decided to accept all new applications and to allow the applicants to sit for the exam. However, no license would be issued to Scott Bogus or Brian Streeter until they had completed their applications. Beginning in 2006, the Board would no longer review applications if they were missing information required by the form or were incomplete in any way. They also decided that all applicants would be required to provide references, even applicants that had previously been licensed in the state. Licensed plumbers would be the only individuals exempt from providing references.

### **New Business**

#### **Website Updates**

Mr. Schofield reported that the requirements by individual towns for well construction had been compiled, checked for accuracy, and posted on the Water Well Board home page.

The meeting was adjourned.